While we appreciate improvements that have been made in the new draft of the Industrial Stormwater General Permit, particularly in the area of monitoring requirements, we do have a number of serious concerns with the permit. Given the serious water quality problems we face in this region and the strong relationship between stormwater runoff and the contamination of Puget Sound, we do not feel that we can wait another permit cycle to have these problems addressed. I hope you find the following suggestions constructive as you rework the draft.

To begin with, as noted above, there are a number of new provisions which we strongly support. You have included significant monitoring requirements which will begin to establish a real baseline of information from which to regulate under future permits. We believe this is an essential first step. We also appreciate inclusion of general language which requires compliance with water quality standards. Finally we appreciate the fact that you have defined "new facilities", which are then automatically required to comply with permit conditions, to include those which previously held permits but lost them due to enforcement actions or failure to pay fees.

While we appreciate these improvements, there are a number of areas in the draft permit which we feel are deficient. In particular, we are very troubled by the ability of applicants to, in a sense, self-regulate themselves without true oversight by the agency.

To begin with, while the permit generally identifies the need to comply with water quality standards, there are a number of provisions which would allow permitees to escape this requirement. We believe that a number of these violate either state or federal law.

The first of these exceptions, involves the ability of dischargers to qualify for a mixing zone by simply checking a box and signing and submitting a form. (draft fact sheet: "Appendix E" mixing zone request). If the applicant submits such a form, there would then be no practical way to use the monitoring generated by the applicant to insure compliance with water quality standards. To make the situation worse, it would appear that, because existing facilities need not submit an application for modification of coverage to be eligible for a mixing zone, there would be no opportunity for the public to review or challenge many of these determinations. Finally, it would seem that, under the terms of the permit such applications are automatically approved within 38 days unless Ecology acts. Given the volume of requests and the limited staffing at the agency to respond, we are concerned that this approach will not allow for adequate review.

We are particularly disturbed with this approach since current law requires a demonstration that the applicant has fully applied AKART prior to the granting of any mixing zone. Our information suggests that in most cases BMP's are not correctly applied on site. Your own inspections indicate no more than 25% of the facilities are full compliance with such requirements. It is a serious mistake to assume AKART is being met at these facilities.

Moreover, Ecology must determine, again under current law, that the request for a mixing zone is accompanied by enough information that the agency could reasonably determine that there is no interference with beneficial uses or ecosystem damage. The form would not seem to provide you with enough information to make such a determination let alone the resource problems mentioned above.

We also object to the allowance of extended compliance timelines for facilities discharging into 303(d) listed waters. While we appreciate that you have required applicants to meet water quality standards at end-of-the-pipe, the extension of compliance timelines beyond 3 years violates the federal Clean Water Act. 33 USC 1342(p)(3)(A) and (4)(A) and 1311(a).

We also object to language which would allow permittees to escape water quality standards in the event of storm events which exceed design criteria for stormwater treatment systems.
Again, we feel this violates the federal Clean Water Act.

Another major concern is that, despite all the effort that the department underwent to develop the new Stormwater Manual for Western Washington, the new industrial stormwater permit does not require all facilities to meet these new standards. We urge you to require this of all the facilities covered by the permit.

The draft permit should also include a requirement that a current permit be kept on file at the Department, so that it is available for public review. Similarly, visual monitoring reports should be submitted to the Department and kept on file.

Finally, while we do not object to EPA's "no exposure" exemption to permit requirements, we do not believe that the procedure identified in the draft permit for such exemptions complies with federal law. Again, the department allows permittees to simply submit a form and if the Department does not respond, the exemption is automatically granted within 60 days. We believe that this does not qualify as a "no exposure" determination as required of the agency under federal law.

In summary, while we applaud the progress the department has made in developing this permit, we still believe that it is seriously flawed and in conflict with federal and state law. We are particularly disturbed by the components with allow permittees to make important determinations without independent verification by the state. While we recognize that your resources are limited, we feel that this approach is almost certain to fail.